EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

(2)

92-1291

CASE NO. _____

_____

Supreme Court, U.S.
FILED
NOV 9 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ERNEST P. FROHLICH,
PETITIONER,

VS.

THE STATE OF ARIZONA,
RESPONDENT.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE PIMA COUNTY CONSOLIDATED JUSTICE
COURT FOR THE STATE OF ARIZONA

APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ERNEST P. FROHLICH
c/o 12202 N. Puma Rd.
Marana, Arizona 85653
1-602-682-5006
pro-per

61 pp

TABLE OF CONTENTS

VIDEO CONFIRMING ORDER	1
PRETRIAL CONFERENCE	2
MOTION TO SUPPRESS	3
NOTICE/DEMAND RIGHT TO COUNSEL	6
MOTION HEARING	8
TRIAL ORDER	8
SENTENCING ORDER	9
CONDITION OF PROBATION	11
NOTICE OF APPEAL	14
TRANSCRIPT PRETRIAL	15
APPELLANT'S OPENING BRIEF	19
RULING ON APPEAL BRIEF	20
RECONSIDERATION ORDER	22
COURT OF APPEAL ORDER	23
SUPREME COURT ORDER	25
SUPREME COURT RECONSIDERATION	26
MATERIAL HEARING TRANSCRIPTS	28
TRIAL TRANSCRIPT	33
RULES OF CRIMINAL PROCEDURE	44

ARIZONA REVISED STATUTE 28-181 47

ARIZONA REVISED STATUTE 28-1053 48

ARIZONA REVISED STATUTE 13-3884 50

TITLE 11, SEC. 11-938 51

INCIDENT REPORT 52

IN-CHAMBER RULING 55

OBJECTION TO RULING 56

EXHIBIT - A

PIMA COUNTY, ARIZONA

STATE) NO. CR90-006603

VS.)

ERNEST FROHLICH) CONDITIONS OF RELEASE

_____) VIDEO CONFIRMING ORDER

CHARGE(S): FAIL TO ID, DUI, DOC,

RESISTING ARREST

YOUR NEXT COURT DATE IS JUNE 28, 1990 AT 9:00 A.M. Justice Court (Tucson)

FOR: Pretrial Conference

RELEASE CONDITIONS:

RELEASED ON SIGNATURE PROMISING TO APPEAR

ORDER TO SHERIFF: Release the defendant.

XX Acknowledgement of appearance and conditions of release made before undersigned. DATE: 05/26/90

EXHIBIT - B

PIMA COUNTY JUSTICE COURTS

115 N CHURCH TUCSON, AZ 85701 740-804

STATE OF ARIZONA) Case No. CR90-006603

VS.) MITCH EISINBERG

ERNEST FROHLICH) COUNTY ATTORNEY

_____) Bruce

DEFENSE ATTORNEY

9:00AM

OFFENSE: DUI/DOC/RESISTING ARREST

DEFENDANT: PRESENT Date: 5/25/90

IT IS ORDERED: Motions due 20 days prior to trial. "Offer & Disclosure"

* Other: Set JT 9-11-90 9:00 A.M.

IT IS FURTHER ORDERED: 9-10-90 PO 8:45

Final P.T.C.- 8-23-90 @ 9:00

Counsel appointed over Def. objection.

DATED: 7/12/90 JUSTICE OF THE PEACE

(Ref: Pg. 29 and Pg. 35)

EXHIBIT - C

IN THE JUSTICE COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA	)	NO.90-006603
PLAINTIFF	)	Motions to
VS.	)	Suppress/
ERNEST FROHLICH	)	Dismiss
DEFENDANT	)	August 20, 1990
_____	)	

a. DEFENDANT'S IN CUSTODY STATEMENTS SHOULD BE SUPPRESSED

Dependant did not receive a re-citation of his Miranda Rights. His post-arrest statements should therefore be suppressed. Miranda v Arizona, 384 U.S. 436, (1966)

b. DEFENDANT'S RIGHT TO PRE-INTOX COUNSEL WAS VIOLATED

Defendant requested to speak to Counsel before he took the breath-alcohol test.

The police officer refused to give his permission to do this. In all criminal DWI proceedings, defendant always has the right to contact a lawyer before the breath test, as long as there is no disruption of the investigation, Kunzler v Pima County, 154 Az 568, 744 P.2nd 669(1987). The remedy should be dismissal, State v Holland, 147 Ariz. 453(1985), McNutt v Superior Ct, 133 Ariz 7, (1982).

c. THE INITIAL APPROACH AND INVESTIGATORY DETENTION WERE NOT CONSTITUTIONALLY JUSTIFIED.

Investigation pursuant to warrantless detentions which are not arrests require specific justification. Terry v. Ohio, 392 U.S. 19, 20, (1967), indicated that "Reasonableness in all circumstances of

the particular Governmental invasion of the citizens personal security..." is necessary. The Court in In re Troy C. 21 Cal. 3rd 888, 893(1978), stated that there must be specific articulable facts causing him (the police officer) to suspect that some activity relating to the crime has taken place or will take place. Here the initial investigation was unjustified according to the articulable facts test.

d. NO PROBABLE CAUSE FOR THE ARREST

Here the evidence did not rise to the level required by the standard used to determine Probable Cause: "a statement of facts which would cause a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime."

People v Parker 85 Cal. App. 3d. 434(1978).

RESPECTFULLY SUBMITTED

DAVID BRUCE (ATTORNEY FOR DEFENDANT)

EXHIBIT - D

IN THE JUSTICE COURT OF THE STATE OF ARIZONA FOR PIMA COUNTY

(PIMA COUNTY JUSTICE COURT

90 AUG 22 PM 3:59)

THE STATE OF ARIZONA) CASE NO.90-006603

VS.) NOTICE AND DEMAND

Ernest P. Frohlich) RIGHT TO COUNSEL

_____)

Comes now the Accused, appearing specially and not generally herein, to demand as a matter of right under the Arizona Constitution and the United States Constitution the right to counsel.

This Free and Natural Person demands all his rights at all times never waiving any of them at any time including his right to time. In addition, if the court fails to timely notify this person of "Rights" Sua Sponte or those declared or demanded by this person, the court on its own volition denies itself jurisdiction.

This Free and Natural Person demands his right to counsel of choice and not to be forced to court appointed counsel over his objections.

Ref: 6th Amendment U.S. Constitution.

Oral argument demanded.

Respectfully submitted,

Ernest P. Frohlich, in Propria Persona

EXHIBIT - E

PIMA COUNTY JUSTICE COURTS

115 N CHURCH TUCSON, AZ 85701 740-8044

STATE OF ARIZONA CASE NO. CR90-006603

VS. MS DAY

ERNEST FROHLICH COUNTY ATTORNEY

IT IS ORDERED: Df motions filed 9-1-90 were denied.

Court denies - Set trial to go!

IT IS FURTHER ORDERED: as Of & Defense shall present to ct. respective rules before trial.

DATED: 9-10-1990 JUSTICE OF THE PEACE

EXHIBIT - F

PIMA COUNTY JUSTICE COURTS

115 N CHURCH TUCSON, AZ 85701 740-8044

STATE OF ARIZONA CASE NO. CR90-006603

VS. W. DAY

COUNTY ATTORNEY

ERNEST FROHLICH D. Bruce

DEFENSE ATTORNEY

OFFENSE: DEFENDANT: PRESENT

IT IS ORDERED:

___ **Defendant is ____ guilty** 28-692 (A)

Per Jury,; 28-721, 28-1075, + 28-729 all

Per Court.

Sentencing before Donfeld 10-3-90 9:00 pm

Dismiss w/prej. Per Judge Girard 13-2508,

13-2909 + 28-1253 had insurance.

DATED: 9-11-90 JUSTICE OF THE PEACE

EXHIBIT - G

PIMA COUNTY JUSTICE COURTS

115 N CHURCH TUCSON, AZ 85701 740-8044

STATE OF ARIZONA CASE NO. CR90-006603

VS. WANDA DAY

COUNTY ATTORNEY

ERNEST FROHLICH DAVID BRUCE

DEFENSE ATTORNEY

OFFENSE: DUI DEFENDANT: PRESENT 5-25-90

IT IS ORDERED: Bond appeal $500 Posted by 10-13-90

Motion for Post-Conviction relief denied.

Motion for Judicial notice of Adjudicative Facts denied.

X Defendant pay a fine of $ 472.50, + 8 = 480.50 + $300 ATTY FEES

X Defendant pay $ 50.- per month commencing the 1 day of Dec.,1990 until fine of 780.50 is paid.

Defendant to be committed to Pima county Jail for a period of 48 hours.

Defendant be placed on probation 12 mos: X supervised: ___ unsupervised.

DATED: 10-3-90 JUSTICE OF THE PEACE

EXHIBIT - H

a PIMA COUNTY CONSOLIDATED JUSTICE COURTS

115 N Church Avenue Tucson, Az 792-8044

STATE OF ARIZONA) CASE NO.90-006603

VS.)

ERNEST FROHLICH) CONDITIONS OF

_____) PROBATION

You have been place on (x) supervised probation for a period of 12 months. If you have been placed on supervised probation, you have 72 hours from date of sentence to report to:

PIMA COUNTY ADULT PROBATION

110 W. CONGRESS

8TH FLOOR

TUCSON, AZ 85601

You will violate no laws: city, county, state or federal. You will make reports to and carry out the lawful orders of your Probation Officer.

ADDITIONAL CONDITIONS: You have 72 hours from date of sentence to report to:

(X) With Alcohol Evaluation and Treatment

(X) Pay fine. Pay Atty. fees 48 Hrs. Jail

I understand that violation of the conditions above could result in the revocation of my probation and my being resentenced to the maximum term permitted for the offense for which I was convicted.

Date: 3 Oct 90

(signed) Ernest Frohlich under threat

DEFENDANT

12202 N. Puma Rd. Marana Arizona

DATED: 10-3-90 JUSTICE OF THE PEACE

b. PIMA COUNTY JUSTICE COURTS

115 N CHURCH TUCSON, AZ 85701 792-8044

STATE OF ARIZONA) CASE NO. 90-006603

VS.)

ERNEST FROHLICH) ORDER OF COMMITMENT

_____)

CHARGE(S): DWI

To the Sheriff of this County:

IT IS ORDERED: that Defendant be confined in the County Jail for a period of 48 hours or until further order of the Court. These days are being imposed as a term and condition of probation:

IT IS FURTHER ORDERED that Defendant report to the County Jail DATE: 10-26-90 TIME: 9:00 am. LOCATION: 29th + Mission Release 10-28-90 9am. to serve his sentence.

DATED: 10-3-90 Judge

c. I understand the terms of the above sentence and gree (agree) to appear at the time(s) indicated in a sober condition. I also understand that I must provide my own transportation.

DATED: Refused to Sign but given a copy

Defendant

EXHIBIT - I

PIMA COUNTY JUSTICE COURTS

115 North Church Tucson, ARIZONA 85701

792-8047

(PIMA COUNTY JUSTICE COURT

90-OCT-3 AM 10 05)

STATE OF ARIZONA) CASE NO. 90-006603

VS.)

) NOTICE OF APPEAL FROM

ERNEST FROHLICH) JUDGMENT OF NON-RECORD

_____) COURT (Traffic)

NOTICE IS HEREBY GIVEN that the defendant appeals the judgment and sentence entered in this Court on 3 Oct, 1990, at which time he was found guilty of: DUI

And was sentenced as follows:

$780.50 Fine

48 Hr. in Jail

12 Mo. Probation

DATED: 3 OCT 90 ERNEST FROHLICH

Defendant

EXHIBIT - J

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,)

Plaintiff,)

vs.) NO. CR-32362

ERNEST FROHLICH,)

Defendant.)

_____)

Tucson, Arizona

November 29, 1990

BEFORE: The Hon. Nanette M. Warner, Judge

Division 20

RE: Transcript of Proceedings Pretrial Conference

APPEARANCES:

Wanda Day, Esq.

Deputy County Attorney

For the Plaintiff

Mr. Ernest Frohlich In Propria Persona

(Pg. 3, lines 19 - 25)

THE COURT: I am going to deny your request for a trial de novo. It appears that the evidentiary matters were reported. That's all that had been reported. It will be decided on the transcripts and briefs that have been submitted. Has the briefing schedule

been set up?

MS. DAY: No. I thought we would do that today.

(Pg. 4, Lines 2 - 17)

THE COURT: I will give you, because of the holidays coming up and the transcripts have been prepared --

MS. DAY: Have you received copies of them yet?

I know Mr. Frohlich requested a preparation.

MR. FROHLICH: I have received nothing, Your Honor.

Ms. DAY: Have you requested to see whether they have been prepared or not?

MR. FROHLICH: I submitted my paperwork, and the only thing I ever received was a notice to appear today, which was in violation of the time frame for even having this heard, Your Honor.

It is in violation of Rule 30.3 and 30.4 for date and time of having this case heard.

(Pg. 5, lines 3 - 18)

MS DAY: The problem is the problem getting transcripts out of Justice Court. Sometimes they are very slow. So a lot of times the briefing schedule has to wait until the transcripts have been filed here.

THE COURT: There is a motion that was Order to prepare -- there was a motion filed by Mr. Bruce. He was your attorney below?

MR. FROHLICH: He was assistance to me only, Your Honor. He was not my attorney.

THE COURT: Okay. Well, he is licensed to practice law in the State and

he filed that motion?

MR. FROHLICH: Yes, ma'am.

MS. DAY: What we've done in these cases before is, once the transcripts are prepared, we use that date and then set the briefing schedule based on that date.

EXHIBIT - K

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OR PIMA

THE PEOPLE OF THE STATE OF ARIZONA,

PLAINTIFF AND RESPONDENT

vs.

ERNEST FROHLICH DEC 16 1991

DEFENDANT AND APPELLANT

NO. CR-32362

APPEAL BRIEF

APPELLANT'S OPENING BRIEF

ON APPEAL FROM THE JUDGEMENT OF THE PIMA COUNTY CONSOLIDATED JUSTICE COURT THE

HONORABLE ROBERT DONFELD, JUDGE

ERNEST FROHLICH

12202 N. PUMA RD

MARANA, ARIZONA 95653

1-602-682-5006

PRO-SA

EXHIBIT - L

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: HON. JOHN F. KELLY

Court Reporter: None CASE NO. CR-32362

DATE: February 6, 1992

STATE OF ARIZONA

VS

ERNEST FROHLICH

MINUTE ENTRY

IN CHAMBERS RULING RE: JUSTICE COURT APPEAL:

The Court has read appellant's brief

and Appellee's response and has read the transcripts including the transcript of the suppression hearing held on September 4, 1990.

THE COURT FINDS that there is substantial evidence in the record to support the jury's verdict and to support the decision of the Justice of the Peace with regard to the motions to suppress.

THE COURT FURTHER FINDS that the decision of the Justice of the Peace was not illegal or an abuse of discretion, there fore,

IT IS ORDERED that the judgment of the Justice Court is affirmed.

IT IS FURTHER ORDERED that Appellant's opposition to State's motion to strike petitioner's motions dated February 3, 1992 is denied.

IT IS FURTHER ORDERED that

Appellant's demand for oral argument is denied.

IT IS FURTHER ORDERED that Appellant's motion for default judgment is denied.

IT IS FURTHER ORDERED this matter be remanded to Justice Court for all further proceedings.

Sherrill V. Yarema - Deputy Clerk

EXHIBIT - M

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: HON. JOHN F. KELLY

Court Reporter: None CASE No. CR-32362

DATE: February 28, 1992

STATE OF ARIZONA

VS

ERNEST FROHLICH

MINUTE ENTRY

IN CHAMBERS RULING RE: DEFENDANT'S MOTION FOR RECONSIDERATION AND DEMAND FOR ORAL ARGUMENT:

IT IS ORDERED the motion for reconsideration is denied.

IT IS FURTHER ORDERED the demand for oral argument is denied.

Sherrill V. Yarema - Deputy Clerk

EXHIBIT - N

IN THE COURT OF APPEALS STATE OF ARIZONA

DIVISION TWO

FILED BY CLERK

MAY - 4 1992

COURT OF APPEALS DIVISION TWO

Order 2 CA-CR 92-235-PR

THE STATE OF ARIZONA,) PIMA County

Respondent,) Superior Court

vs. Cause No. CR-32362

ERNEST FROHLICH,)

Petitioner,)

_____)

ORDERED: Notice and Demand for the Complete Record to be Reviewed for this Appeal (Oral Argument Demanded) is denied.

FURTHER ORDERED: The above-entitled cause number is amended to read 2 CA-CR 92-0235, the caption is amended accordingly.

It appearing to the court that this appeal is without the jurisdiction of this Court, pursuant to Arizona Constitution Article 6, Sec, 5(3); A.R.S. Sec. 22-375, therefore,

FURTHER ORDERED: The above-entitled appeal is DISMISSED.

Judges Hathaway and Drake concurring.

Dated: May 4, 1992 Lloyd Hernandez

Presiding Judge

EXHIBIT - O

Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING 1501 WEST WASHINGTON PHOENIX, ARIZONA 85007-3329 TELEPHONE:(602)542-9396

August 11, 1992

RE: STATE OF ARIZONA vs. ERNEST FROHLICH

Supreme Court No. CR-92-0213-PR

Court of Appeals No. 2 CA-CR-0235

Pima County No. CR-32362

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 10, 1992, in regard to the above-referenced cause:

On consideration, Chief Justice Feldman,

Vice Chief Justice Moeller and Justice Martone participating,

ORDERED: Petition For Review = DENIED.

Record returned to the Court of Appeals, Division Two, Tucson, this 11th day of August, 1992.

NOEL K. DESSAINT, Clerk

EXHIBIT - P

Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING 1501 WEST WASHINGTON PHOENIX, ARIZONA 85007-3329 TELEPHONE:(602)542-9396

September 10, 1992

Mr. Ernest P. Frohlich

12202 North Puma Road

Marana, Az 85653

RE: STATE OF ARIZONA vs. ERNEST FROHLICH

Supreme Court No. CR-92-0213-PR

Court of Appeals No. 2 CA-CR 92-0235

Pima County No. CR. CR-32362

Dear Mr. Frohlich:

On August 26, 1992, our office received from you an "Opposition/ Objection to Ruling" in the above-referenced case. As you know, this court denied review in the above-referenced case which was communicated to you by minute letter on August 11, 1992. Rule 31.18 of the Arizona Rules of Criminal Procedure states, in part, that "unless permitted by specific order of the appellate court, no party shall file a motion for reconsideration of an order denying a petition for review."

Consequently, your document shall not be filed in this case, nor processed.

Very truly yours, Clerk of the Court

EXHIBIT - Q

IN THE PIMA COUNT CONSOLIDATED

JUSTICE COURTS

THE STATE OF ARIZONA,)

Plaintiff,)

VS) CR90-006603

ERNEST FROHLICH)

Defendant,)

_____)

TRANSCRIPTION OF MARTIAL HEARING

SEPTEMBER 04, 1990

PRESIDING: EMOJEAN GIRARD

APPEARANCES: WANDA DAY, STATE OF ARIZONA

DAVID BRUCE/ERNEST FROHLICH

ATTORNEY AT LAW FOR THE DEFENDANT

M.T. (Pg. 04, lines 5 -7)

MR. BRUCE: I was appointed...my statement to the judge was that Mr.

Frohlich objected to the appointment of any counsel and the judge indicated that you can utilize Mr. Bruce however you wish.

M.T. (Pg. 05, lines 4 -6)

MS. DAY: Okay. And...and I would just like to have the court make mote that he did object to having a counsel appointed for him.

H. T. (Pg. 11 lines 13 -15)

Q: And did you actually see...see the dirt coming out?

A: Uh, not that I recall. What I mean referring to dirt is it's not a paved shoulder. It is of grass and desert brush.

Hearing Trial (Pg. 19, lines 10 - 14)

MS. Day: Okay. Uh, did you, uh, read the, uh, defendant his Miranda rights?

OFFICER MADDEN: At this time, no, not until...oh, after he had ben secured, yes, he was read his Miranda warrants after we had stood him up by the vehicle.

(Pg. 19, lines 19 -21)

Q: (Pause) And did you ask him if he would waive his Miranda rights?

A: I did ask that question and no he did not.

(Pg. 21, lines 17 -18)

Q: Did he mention anything about any attorney?

A: Uh, not that I recall.

(Pg. 22, lines 4 -6)

A: Um, he indicated to me verbally

or he refused to take the test, uh, stating that we would be illegally taking, uh, evidence without an attorney.

H. T. (Pg. 28, lines 14 -24)

Q: Now, isn't it true that the particular, uh, roadway upon which my client was driving one that was, you might character... would characterize as a winding roadway would you not?

A: The road has curves in it, yes.

Q: And, uh, wouldn't you describe those curves as being, uh, uh, significant in their curbiture?

A: I think that's all relevant as to what's significant in curves and what's not.

Q: Would you say they're not significant.

A: I would say they would be

significant at eighty miles an hour Whether they're significant at thirty-five I would say 'no'.

(Pg. 30, line 21)

A: I don't recall any direct request for counsel.

(Pg. 33, lines 8 -11)

MR. BRUCE: Yeah, isn't it true that in the written report there is no indication that you noted that you gave him his Miranda rights. Isn't that correct?

OFFICER MADDEN: I don't see it in the report.

(Pg. 34, lines 17 -19)

Q: And that happened only two times.

Is that correct in a period of a mile and a half.

A: Yes sir.

M.T. (Pg. 64, lines 7 -13)

JUDGE GIRARD: Um, I'm ready to rule on that issue I think.

MR. BRUCE: Okay.

JUDGE GIRARD: Um, the defendant was raising the issue, but he really didn't ask for an attorney, um, unfortunately, sometimes it's the manner in which we do things that either does or doesn't bring about the desired result, uh, I'm denying the motion. Uh, I think the defendant did't request an attorney. Had he requested one the officer's procedure should have been different, but I don't find that you..you did in all of that.

EXHIBIT - R

IN THE PIMA COUNT CONSOLIDATED

JUSTICE COURTS

THE STATE OF ARIZONA,)

Plaintiff,)

VS) CR90-006603

ERNEST FROHLICH)

Defendant,)

_____)

TRANSCRIPTION OF JURY TRIAL

SEPTEMBER 11, 1990

PRESIDING: ROBERT DONFELD

APPEARANCES: WANDA DAY, STATE OF ARIZONA

DAVID BRUCE/ERNEST FROHLICH

ATTORNEY AT LAW FOR THE DEFENDANT

T.T. (Pg. 50, lines 1 - 6)

A: As I recall it was a, uh, clear evening. There were no, uh, problems, no

clouds and, uh, no wind. It was, uh, a calm night.

Q: How about the traffic conditions?

A: Uh, we were the only vehicles on the road, uh, at that time and throughout the, uh, trip I do not recall any vehicles other than ours.

T.T. (Pg. 67, lines 23 - 25)

Q: Okay. (Sigh) You s...I know that the road is windy, uh, how many curves or turns would you say you went through during this mile and a half of drive down this road?

T.T. (Pg. 68 lines 19 - 25)

Q: Uh, you stated that the accused, uh, crossed the center line, uh, wherever it was, uh, could you tell us how far that...that was, I mean, did the wheels

just barely get over the line or was it three feet over the line?

A: The wheels were over the yellow line.

Q: Just the wheels?

A: Yes sir.

(Pg. 68, lines 1 - 10)

mile and a half, would you say you went through twenty turns?

A: No, I wouldn't think so.

Q: Would you say it was fifteen turns.

A: I would say it's depending on what your view of turns are. I would say only three.

Q: Well, great...greater than a forty-five degree angle of a turn.

A: No. I would say probably no more

than three or four.

Q: Is there any hills or dips in this road?

A: Yes there are.

T.T. (Pg. 69, lines 1 - 3)

Q: Was it dark enough no this particular night to observe, uh, oncoming traffic by just the headlights of their car on the road?

A: Yes sir.

T.T. (Pg. 75, lines 15 - 24)

Q: Could...could the accused have said, I want probable cause, fourth amendment warrant, and council?

A: I recall about fourth amendment, yes. I don't recall the rest.

Q: Could he have said that statement?

A: He could have.

Q: Did he ask to be taken to a magistrate that night?

A: I don't recall.

Q: Did he ask for your badge... your name and badge number?

A: That I don't recall.

T.T. (Pg. 77, lines 22 - 24)

Q: (Pause) You said you read the complied consent form and the accused...did the accused at that time say, "I need counsel,"?

A: Not that I recall.

T.T. (Pg. 78, lines 21 -25)

Q: My specific question is: Do you have anything in writing that says the accused waived counsel?

A: No.

Q: Uh, was there a reason not to allow the accused to call counsel that night?

T.T. (Pg. 79, line 1)

A: He never asked.

T.T. (Pg. 79, lines 18 - 25)

Q: I understand and we haven't gone into any of the other stuff. Uh, you say that the accused refused to sign the paperwork and then was rehandcuffed and taken for incarceration that particular night?

A: That's right.

T.T. (Pg. 79, lines 22 - 25)

Q: Okay. you say that the jail required his fingerprints that night, uh,

did you have to force the accused to get his fingerprints?

A: Myself and several correction's officers were required to

T.T. (Pg. 80, lines 1 - 3)

fingerprint you.

Q: Did he object to it?

A: The accused? Yes he did.

T.T. (Pg. 95, lines 9 - 20, 23)

MR. BRUCE: No, he's not going to testify. Your Honor, we would like...we would like to call Officer Rankin. We realize we indicated there wouldn't me witnesses. However, we did subpoena him ourselves.

JUDGE DONFELD: Is he here?

MS. DAY: No, he's not here.

MR. BRUCE: I believe he...

MR. FROHLICH: He was here this morning.

MS. DAY: He was here this morning, but, I released him because I decided that I had enough inf...evidence without him.

JUDGE DONFELD: Did you subpoena him?

MR. BRUCE: We subpoenaed him.

JUDGE: Do you have any evidence that you subpoenaed him?

T.T. (Pg. 96, lines 4 - 15)

MR. BRUCE: I can, uh, certainly we can call the constable over at the...the...the, uh...

JUDGE DONFELD: I...I don't see anything in my file that indicates there was a return of service.

MR. BRUCE: Ther...they...I never get

a return of service from them your Honor. I don't know whether you did or not, but they give me no copies, but, that could be easily determined if we simply call the constable's office.

MS. DAY: Your Honor, uh just to let the court know, I asked him if he had been supoenaed by the defendant and he said he was in deed subpoenaed for the Evidentiary Hearing, but not for the trial itself.

T.T. (Pg. 100, lines 17 -25)

JUDGE DONFELD: Be seated please. Mr. Bruce, did you make the phone call.

MR. Bruce: Yeah, I called the counsel and I...the Constable and I don't think I can back up my statement. The only...the only, uh, date they have,

they don't...they don't have the subpoena. All they have is a date they wrote 9-4. 9-4 happens to correspond with...with the motion date. That's the only date they have, uh, written and...

JUDGE DONFELD: So then, I can assume that the officer was not subpoenaed for todays trial?

T.T. (Pg. 105, lines 23 -25)

JUDGE DONFELD: Well, let...let me lay all of that to rest for your client. You know the law as well as I do. Mr. Frohlich, listen very carefully. The law does not require a wit...a written

---

T.T. (Pg. 106, lines 1 - 13)

waiver of Miranda rights. That's number one. Number two: You were not questioned by the officers in a custodial sense, at

least, nothing...no questions and answers that were elicited to the jury such as would give rise to Miranda. Miranda only applies in a custodial interrogation where the officer is now using the question and the answers before the jury. None of that was given. He never had an opportunity to ask you questions, nor did you elicit any answers. So, Miranda really doesn't apply in this case.

MR. FROHLICH: I'll have to object on that finding, your Honor. I believe Miranda does apply because it is not only questions and answers, it is evidence. And, in this case they're trying to use a breathilyzer as evidence. And, in this case they're trying to use a breathilyzer as evidence and there...therefore it does fall under Miranda.

JUDGE DONFELD: Alright. Your objection is noted for the record and denied.

EXHIBIT - S

RULES OF CRIMINAL PROCEDURE Pg. 164

RULES OF CRIMINAL PROCEDURE

a. **RULE 26.10 PRONOUNCEMENT OF JUDGMENT AND SENTENCE**

b. Pronouncement of Sentence. The Court shall: (2) State that it has considered the time the defendant has spent in custody on the present charge;

POST-VERDICT PROCEEDINGS Pg. 165

b. **RULE 26.11 DUTY OF THE COURT AFTER PRONOUNCING SENTENCE**

c. Hand the defendant a written notice of these rights and the procedures he must follow to exercise them, receipt of which shall be shown affirmatively in the record.

c. **APPELLATE RULES** Pg. 173

RULE 31.10 FILING OF THE RECORD

Upon receipt, the clerk of the Appellate Court shall file each portion of the record and shall immediately give notice to all parties of the date on which the record is complete.

RULES OF CRIMINAL PROCEDURE Pg. 170

d. **RULE 30.3 PREPARATION OF RECORD**

Within 3 days of receiving notification of the appeal, the presiding officer of the lower court shall transmit to the clerk of the Superior Court such records of the proceedings in his court as are required by statute. He shall immediately stay the execution of any element of the sentence requiring the incarceration of the defendant and shall

stay the execution of any other element of the sentence upon the execution of a bond in the manner provided by law.

e. **RULE 30.4 SETTING THE DATE FOR TRIAL**

Within 7 days after receipt of the record of the case, the appeal shall be entered on the docket, set for trial on a date within 40 days of the filing of the notice of appeal, and the parties notified of the trial date.

EXHIBIT - T

TRANSPORTATION Title 28

ARTICLE 2. GENERAL PENALTIES

Sec. 28-181. Violation; classification; exception; failure or refusal to do or perform required act

A. A person violating any provision of this title, or failing or refusing to do or perform any act or thing required by

this title, is guilty of a class 2 misdemeanor, unless the statute defining the offense provides for a different classification. This subsection does not apply to any provision or requirement of chapter 3, 4 or 6 or chapter 7, article 8 or chapter 8, article 3.2 of this title.

A. Any violation of or failure or refusal to do or perform any act or thing required by chapter 3, 4 or chapter 7, article 8 or chapter 8, article 3.2 of this title constitutes a civil traffic violation unless the statute defining the violation provides for a different classification. Civil traffic violations are subject to the provisions of chapter 6, articles 20 and 21 of this title.

EXHIBIT - U

TRANSPORTATION Title 28 Pgs. 560 & 561

Sec. 28-1053. When person arrested must be taken immediately before a magistrate

When a person is arrested for any violation of this chapter punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense, provided a person taken before a justice of peace shall be taken before the nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

1. When a person arrested demands a immediate appearance before a magistrate.
2. When the person is arrested upon a charge of negligent homicide.
3. When the person is arrested upon a

charge of driving while under the influence of intoxicating liquor or narcotic drugs.

4. When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries or damage to property.

5. When it reasonably appears to the arresting officer that the person arrested is about to leave the jurisdiction of the state.

6. In any other event when the person arrested refuses to give his written promise to appear in court as provided in this article.

Amended by Laws 1959, Ch. 101, sec. 1.

EXHIBIT - V

CRIMINAL CODE Title 13

Sec. 13-3884. Arrest by private person

A private person may make an arrest:

1. When the person to be arrested has in his presence committed a misdemeanor amounting to a breach of the peace, or a felony.

2. When a felony has been in fact committed and he has reasonable ground to believe that the person to be arrested has committed it.

EXHIBIT - W

COUNTIES Title 11 Pg. 390

Sec. 11-938. Agreement to appear in court

County parks rangers are authorized to take any person before a magistrate within the county in which the offense is committed for a violation of any of the rules and regulations passed pursuant to this article, but any person apprehended

for violation any of the rules or regulations passed pursuant to this article punishable as a misdemeanor may be issued a notice to appear before such magistrate bearing the date, time and place for such appearance, the offense charged and the location or approximate location where the violation was committed. The notice to appear shall be signed by the person notified to appear, and he shall be given a copy thereof and thereupon released from custody. Failure of such person to appear at the time and place specified shall be cause for issuance of a warrant for his arrest.

EXHIBIT - X

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report No. 90-05-25-953 **Incident Location** Kinney Rd. 1/4 Miles of McCain Loop(N) **Class** 21.04 **Dist.** SX **Reporting Officer** K. W. Madden **Badge** 1411 **Date** 05/25/90 **Time** 2009

SYNOPSIS ONLY

On 05/25/90 at approximately 2005 hrs, I was N/B on Kinney Rd 1/2 south of Juan Santa Cruz picnic area in Tucson Mountain park. I observed a 19 VW rabbit (CTB-756 Az) in front of me go off the right side of the road and then abruptly correct. The vehicle continued N/B and continued weaving within its lane. The vehicle then drove left of center negotiating a turn by Juan Santa Cruz picnic entrance. The vehicle continued N/B and again crossed left of center just north of the Desert Museum entrance. I activated my

emergency lights, however. There was no apparent response by the driver, who again crossed left of center just north of the Desert Museum. I got on the P.A. and told the driver to stop his vehicle at which he slowly complied. I made contact with the driver, Ernest Peter Frohlich, and immediately noticed a strong odor of alcoholic beverage coming from his breath. I asked for his Reg. Ins. + D/L at which he slowly fumbled for Mr Frohlich appeared very lacksidasical in his search. Mr. Frohlich was asked 3 times for his D/L and did not produce it. I asked him to get out of the car and he refused. Mr Frohlich was very belligerent and stated I had no cause to stoop or detain him. I asked again for him to get out of the vehicle and he refused. Mr

Frohlich was physically removed by officers from the vehicle. Mr Frohlich held onto his steering wheel as we attempted to remove him. After breaking him free he struggled on the road in an attempt to prevent handcuffing. Mr Frohlich was finally secured and placed into a P.C.S.O. transport. And transported to Pima County Jail. Mr Frohlich refused Intoxilyzer saying it violated his rights. Mr Frohlich was cited for failure to produce D/L /Identity upon request (28-1075) D.U.I (28-692A) Disorderly Conduct (13-2904) Resisting arrest (13-2508). Mr Frohlich refused to sign any of the citations and was subsequently booked into the Pima County Jail. N.F.I. K.W. MADDEN 1411

INCIDENT REPORT - NARRATIVE

EXHIBIT - Y

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: HON. JOHN F. KELLY

DATE July 19, 1991 CASE NO. CR-32362

STATE OF ARIZONA

vs.

ERNEST FROHLICH

MINUTE ENTRY

IN CHAMBERS RULING RE: JUSTICE COURT APPEAL:

IT IS ORDERED that the State's motion to strike the defendant's motion to dismiss for lack of jurisdiction is granted.

IT IS FURTHER ORDERED that defendant's motion to dismiss for lack of jurisdiction is stricken. Defendant may rise this issue in his brief.

IT IS FURTHER ORDERED that all Justice Court transcripts necessary to the decision in this matter be filed in Superior Court no later than 5:00 p.m. on August 16, 1991. Sherrill V. Yarema

Deputy Clerk

EXHIBIT - Z

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

PLAINTIFF,

Vs. CR-32362

ERNEST FROHLICH OBJECTION to JUDGES

ACCUSED. KELLY'S ORDERS

ORAL ARGUMENT DEMANDED

NOW COMES THE ACCUSED THROUGH HIMSELF AND OBJECTS TO THE HON. JUDGE KELLY'S ORDERS DATED 19, JULY 1991. THE FIRST ORDER VIOLATES THE ACCUSED'S CONSTITUTIONAL

RIGHTS OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW. THIS IS JUST ANOTHER IN A SERIES OF ORDERS DENYING THIS ACCUSED OF HIS RIGHTS AND VIOLATES THIS ACCUSED'S NINTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES of AMERICA.

OBJECT TO THE SECOND ORDER AS IT AGAIN VIOLATES RULE 30.3. THIS IS THE THIRD TIME THIS COURT HAS OVER RULED THIS RULE AND THE COURT IS BOUND TO OBEY THESE RULES. OBJECTION

THE ACCUSED MOVES THIS COURT TO DISMISS ANY AND ALL OF THESE ACTIONS AGAINST HIM WITH PREJUDICE AS THE COURT AND ITS AGENTS ARE STILL VIOLATING RULE 30.3 (EVEN IN LIEU OF COURT ORDERS) TO RESPOND AND PROCEED IN A TIMELY MANNER.

RESPECTFULLY SUBMITTED,

THIS DATE 5 AUG. 91 ERNEST FROHLICH